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## The History and Accomplishments of the International Technical Committee of Aerial Legal Experts (C.I.T.E.J.A.)

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# THE HISTORY AND ACCOMPLISHMENTS OF THE INTERNATIONAL TECHNICAL COMMITTEE OF AERIAL LEGAL EXPERTS (C. I. T. E. J. A.)\*

JOHN JAY IDE†

## *Origin of International Private Air Law Code*

Early in the third decade of the present century a number of international aeronautic organizations became disturbed at the lack of uniform regulations governing private air law. Fearing chaos due to a threatened plethora of national laws on the subject, the Advisory and Technical Committee on Communications and Transit of the League of Nations in 1922, the International Chamber of Commerce in 1923 and the International Aeronautic Federation in 1924 passed resolutions calling upon the Governments to formulate a uniform system of regulation as a certain number of States had done in the field of public air law in drawing up the Convention of October 13, 1919, which came into force in 1922.

The first Government to become interested in private air law was that of France which in June, 1923, submitted to Parliament a bill regarding the liability of the carrier in air transport. It was realized that this question could only be solved by an international agreement and on August 17, 1923, M. Poincaré, then Premier, sent to the French diplomatic representatives a circular letter requesting them to invite the powers to which they were accredited to attend an International Conference of Private Air Law which was planned to take place in November of that year. The proposed duties of the Conference were:

1. To draw up a Convention on the liability of the aerial carrier.

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\*The initials of the title of the Committee in French: Comité International Technique d'Experts Juridiques Aériens.

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2. To decide whether it was desirable to pursue the study of the international unification of private air law.

In his letter, M. Poincaré made the following statement:

"It might have been thought desirable to submit the question (liability of the aerial carrier) to the International Commission for Air Navigation; however this Commission is charged solely with perfecting, by means of amendments, the Convention of October 13, 1919, on air navigation and is not qualified to undertake the preparation of new texts outside the subject of that Convention. The question of the liability of the carrier by air is in the field of private law, entirely unrelated to the Air Convention which fixes the rights of States or Governments with respect to aircraft and their crews and the duties of the crews."<sup>1</sup>

As was to be expected this point of view as to the cognizance of the I. C. A. N. did not meet with the Commission's approval. At its fifth session held in Rome, Oct. 26-31, 1923, the following communication from the French Government which had been addressed to the General Secretary (M. Albert Roper) was discussed:

"The French Government has approached the Governments of various States in order to ascertain their views as to participating in an international Conference which it proposes calling in Paris to examine the question of the liability of aerial carriers. The meeting of this Conference has been fixed in principle to take place during November next.

"Although the matters to be examined by this Conference do not come within the sphere of the International Commission for Air Navigation, they are, however, capable of giving rise to problems which relate to the regulation of air navigation and are discussed by the said Commission. The French Government would be happy to associate the International Commission for Air Navigation with the work of the proposed Conference, and, to this end, has the honor to request the International Commission for Air Navigation if it would authorize its General Secretary to undertake, if need be, the Secretariat thereof."<sup>2</sup>

The I. C. A. N. thereupon unanimously adopted the following Resolution:

"The Commission, after having taken cognizance of the French Government's communication concerning the international Confer-

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1. See page 9, Report of International Conference of Private Air Law, Paris, Oct. 27-Nov. 6, 1925. Issued by French Ministry of Foreign Affairs, 1926.

2. See page 29, Official Bulletin No. 5 of I. C. A. N., Dec., 1923.

ence on questions of aerial law, authorizes its General Secretary to undertake, if necessary, the Secretariat of such Conference.

"It directs its General Secretary, however, to remind the French Government that paragraph (g) of article 34 of the Air Convention refers expressly to the competence of the I. C. A. N. 'in regard to all questions which the State may submit for examination'. It considers that the question of the liability of aerial carriers is closely allied in practice to questions concerning the regulation of aerial navigation, the study of which devolves on the I. C. A. N. by virtue of the International Convention of the 13th October, 1919, and that it is fully qualified, by means of its Legal Sub-Commission, usefully to study this matter. It therefore expresses the wish that, with a view to maintaining a unity of views in the organization of air navigation and of air traffic, paragraph (g) of article 34 be interpreted in its broadest sense by the Contracting States."<sup>3</sup>

At that time, however, the I. C. A. N. was composed of only 17 States of which 13 were actually represented at the Rome session.<sup>4</sup> It was therefore recognized that if the Private Air Law Conference were to be really representative it would have to be independent of the I. C. A. N. Thus the action of the French Government was approved on the ground of expediency.

The proposed Conference did not take place at the time set being twice postponed as several Governments wished to be furnished with the proposals to be discussed many months prior to the Conference.

On June 30, 1925, M. Briand then, as now, French Foreign Minister, sent a circular instruction to the French envoys for delivery to the various Governments enclosing a preliminary draft of an International Convention regarding the liability of aerial carriers. While the discussion of this document would be the principal object of the Conference (definitely called for the following October), other international problems of private law raised by the development of air transport could be submitted by the Governments for examination at the Conference. M. Briand added that the French Government hoped that the question of the liability of aerial carriers would be solved by an International Convention constituting the first step in the unification of international rules for air transport.

3. See Resolution 130 of 5th Session of I. C. A. N. Rome, October 26-31, 1923. Official Bulletin No. 5 of I. C. A. N.

4. Counting the British Empire (which at that time had only one vote on the Commission) as comprising six States.

The preliminary draft was accompanied by a note pointing out that it was urgently necessary for the traveler and consignor to know in case of accident or damage the extent of their rights and the steps to take to enforce them and that it was likewise necessary for the air transport companies to be able to calculate the extent of their liability and to insure against it.<sup>5</sup>

*First International Conference on Private Air Law*

The First International Conference on Private Air Law was finally held at the Ministry of Foreign Affairs, Paris, from October 27 to November 6, 1925, and was really representative including official delegates from 44 countries<sup>6</sup> and in addition observers from the United States, Japan and Hungary. The American observers were the late Lieut. Commander Burg and Major Yount.

M. Laurent Eynac, then French Under Secretary of State for Air, opened the Conference with a speech calling attention to the resolutions passed by the International Chamber of Commerce at the meetings of 1923 and 1925, the International Air Congress of 1923 (London) and Brussels (1925), the International Aeronautic Federation at the 1924 Paris Conference, etc., all pressing for an International Conference to unify private air law. M. Pierre-Etienne Flandin, the first French delegate, was unanimously chosen President of the Conference, the Secretary being M. Roper.

Two Commissions were named, one to report on general questions of private air law and the other on the liability of aerial carriers. After presentation of their reports to the Conference a Convention regarding the liability of the carrier in international air transport was signed by the accredited delegates present.<sup>7</sup> This draft was to be submitted to the various Governments for their examination and later would be signed as an International Convention at a subsequent Conference.

The following motion adopted by the 1925 Conference forms

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5. See pages 12-13, Report of 1925 International Conference of Private Air Law, Paris.

6. The countries represented by official delegates were: Albania, Argentine Republic, Austria, Belgium, Brazil, Chili, China, Colombia, Czechoslovakia, Denmark, Dominican Republic, Egypt, Esthonia, Finland, France, Germany, Greece, Great Britain, Canada, India, New Zealand, Union of South Africa, Guatemala, Italy, Latvia, Lithuania, Luxemburg, Mexico, Monaco, the Netherlands, Paraguay, Peru, Poland, Portugal, Rumania, Siam, Spain, Sweden, Switzerland, Turkey, Union of Socialist Soviet Republics, Uruguay, Venezuela and Yugoslavia.

7. For text of draft Convention see pages 77-82 of Report of 1925 International Conference of Private Air Law.

the legal basis for the existence of the International Technical Committee of Aerial Legal Experts:

"After having drawn up, as an example, a list of questions the study of which should immediately follow the examination of the problem of the liability of carrier by aircraft, the Conference, considering the importance, urgency, complicated nature and the legal technicalities of these questions, passes the resolution that a special Committee of experts be formed as soon as possible charged with preparing the continuation of the work of the Conference.

This Committee would be composed of a limited number of members. Its regular headquarters would be at Paris.

The Conference therefore invites the French Government to enter into relations with the governments invited to this Conference in order that this recommendation may take effect.

The Conference passes the resolution that the first questions for study by this Committee should be:

Damages caused by aircraft to goods and persons on the ground.

Compulsory insurance.

Establishment of aeronautical registers: ownership of aircraft, vested rights and mortgages.

Seizure.

Renting of aircraft.

Aerial collisions.

Legal status of commanding officers of aircraft.

Bill of lading (air consignment note).

Uniform rules for the determination of the nationality of aircraft."<sup>8</sup>

On January 23, 1926, M. Berthelot, the Secretary General of the Ministry of Foreign Affairs, forwarded to the French envoys for transmittal to the various Governments the provisional minutes of the 1925 Conference. The covering letter enquired whether the Governments approved the text of the draft Convention and called attention to the motion passed at the Conference founding the Committee of Experts. The following significant paragraph of the letter may be quoted:

"You are requested to ask the Government to which you are accredited to inform you as soon as possible whether it approves the motion of the Paris Conference quoted above and whether

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8. See pages 82-83 of Report of 1925 Private Air Law Conference.

it intends to participate in the constitution of the Special Committee of Experts. It does not appear possible to have the International Commission for Air Navigation examine questions pertaining to the field of private law. This Commission is charged only with perfecting by means of amendments the Convention of October 13, 1919, on Air Navigation, and is not qualified to undertake the preparation of new texts foreign to the subject of that Convention which defines the rights of States or Administrations with regard to aircraft and their crews and the obligations of the latter. It is also important that each State preserve its complete sovereignty in all matters affecting possible changes in internal legislation; thus the proposed Committee of Experts is to be a purely advisory and completely independent organism both in its methods of work and in its operation".

*First Session of C. I. T. E. J. A.*

The Committee christened the "Comité International Technique d'Experts Juridiques Aériens" was set up at its First Session held at the Ministry of Foreign Affairs in Paris, May 17 to 21, 1926. 28 nations appointed representatives for attendance at this meeting, the United States designating the late Lieut. Commander Burg "to follow the proceedings."

The conference was opened by M. Laurent Eynac, then Under Secretary of State for Air. M. de Lapradelle, the well-known French jurist, was named President of the Session and M. Sudre of the French Under-Secretariat for Air was chosen as Permanent Secretary of the new organization. (His title was changed to Secretary General in 1927.)

The experts were divided into two Sub-Committees, one on Documentation and Organization and the other on Programme and Agenda. While the first established the by-laws of the Committee, the second drew up a list of the questions of private air law proposed for study by the C. I. T. E. J. A. The by-laws of the Committee were later amended and as now in force are given in Appendix A (translated from French text in brochure of C. I. T. E. J. A. dated May 1, 1931). The study of the following problems of private air law was divided among four Commissions set up at the First Session.<sup>9</sup>

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9. See pages 49-50 of Minutes of First Session of C. I. T. E. J. A., May, 1926, issued by Comité International Technique d'Experts Juridiques Aériens.

*First Commission.*

1. Nationality of aircraft.
2. Aeronautical register.
3. Ownership, co-ownership, construction and transfer.
4. Vested rights, mortgages, privileges and seizure.

*Second Commission.*

1. Category of transport (commercial transport, touring, etc.)
2. Bill of lading.
3. Liability of carrier towards consignors of goods and towards passengers.
4. Jettison of cargo and general damage.
5. Renting of aircraft.

*Third Commission.*

1. Damage and liability toward third parties (landing, collision and jettison).
2. Limits of liability (contractual limitation, abandonment).
3. Insurance.

*Fourth Commission.*

1. Legal status of commanding officer and crew.
2. Accidents to the crew and insurance.
3. Status of passengers.
4. Law governing acts committed on board aircraft.

The general method of operation of the C. I. T. E. J. A. in drawing up draft Conventions on questions of private air law was decided upon as follows:

The committee indicates to the competent Commission the matter that it desires to have studied. The Commission instructs its Reporter to prepare an analysis of the subject. The Reporter then sends a Questionnaire to the members of the Commission who are requested to reply to it within a certain time limit. Armed with these replies, the Reporter draws up a note as well as a preliminary draft text on which the Commission is invited to give an opinion during its meeting. When a satisfactory result is reached, a preliminary draft of the Convention is submitted to the Committee. If the Committee does not adopt this preliminary draft it is sent back to the Commission for further study. If, on the other hand, the text is satisfactory to the Committee, it is forwarded to the French Government for distribution to all the interested Governments with a view to calling a Diplomatic Conference



at which the draft is transformed into a Convention signed by the representatives of the States assembled.

*Second Session of C. I. T. E. J. A.*

The Second Session of the C. I. T. E. J. A. was held at the Ministry of Foreign Affairs, Paris, April 4 to 7, 1927, having been immediately preceded by meetings of the 1st and 2nd Commissions. Experts from 27 States were present but the United States did not participate even to the extent of sending an observer. In the absence of the late M. Bokanowski, Minister of Commerce and Aeronautics, the Conference was opened by M. Fortant, then Director General of Aeronautics in the Ministry of Commerce. M. Laurent Eynac, the head of the French delegation, was chosen as President of the Session.

At the Session were discussed the preliminary drafts of a Convention on aerial bills of lading (air consignment notes) and modifications to the 1925 preliminary draft of the Convention on the liability of aerial carriers. It was decided to refer both questions back to the Second Commission with the object of including them in a single draft Convention.<sup>10</sup>

*Third Session of C. I. T. E. J. A.*

Between the Second and Third Plenary Sessions, much activity prevailed in the Commissions which held meetings in Brussels in November, 1927, and Paris in March, 1928. As a result of this, a well studied preliminary draft of a Convention on the liability of the carrier in international air transport and the aerial bill of lading was presented at the Third Session which took place at Madrid from May 24 to 29, 1928.

Only 19 nations sent representatives to Madrid as compared with 28 at the First Session. Seventeen States were represented by delegates and two (the United States and Japan) by observers, the American observers being Mr. H. H. Kelly of the Department of Commerce and the writer.

The Session was opened by General Soriano, the Director General of Spanish Aeronautics, and the Presidency of the Session was given to M. Iranzo, of the Spanish delegation, assisted by M. de Lapradelle (France).

After submission to the Drafting Commission, the preliminary

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10. For full report of proceedings see Minutes of Second Session of C. I. T. E. J. A.

text referred to above was approved by the C. I. T. E. J. A. with few changes and was transmitted to the French Government for communication to all the Governments with a view to calling the Second International Conference of Private Air Law.<sup>11</sup>

*Fourth Session of C. I. T. E. J. A.*

The Commissions again displayed activity, meeting in Paris in October, 1928, and immediately before the Fourth Plenary Session of the C. I. T. E. J. A. held May 6 to 8, 1929, at the Ministry of Foreign Affairs, Paris.

To this Conference 21 nations sent delegates while Japan, China and the United States sent observers. The American contingent of observers consisted of Major Yount, Lieut. Commander Thomas and the writer.

The Session was opened by M. Gaussen, of the Ministry of Foreign Affairs in the absence of M. Laurent Eynac, the Air Minister. M. Giannini, of the Italian Delegation, was chosen President of the Session.

Items on the agenda included the study of two preliminary drafts of Conventions prepared by the First Commission, one on the aeronautical register and the other on aerial mortgages. These were destined to be overshadowed in importance by the question of the liability for damage caused to third parties on the ground, a draft text of which had been prepared by the Third Commission. Prolonged discussion took place as to whether the principle of limited or unlimited liability should be followed and whether the operator and owner of the aircraft causing the damage should be jointly or separately liable. The countries voted by 12 to 7 in favor of unlimited liability notwithstanding resolutions passed by the International Chamber of Commerce and the International Air Traffic Association (the latter composed of the air transport companies) in favor of limited liability.<sup>12</sup> The principle of joint liability of operator and owner was upheld by 11 votes to 7. As it was obvious that a Convention following the text submitted would have received the signature of a very limited number of Governments, the draft was referred back to the Third Commission for further study in an effort to conciliate the opposing viewpoints.<sup>13</sup>

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11. For full report see Minutes of Third Session of C. I. T. E. J. A.

12. The principle of limitation of liability was finally agreed upon at the following Session owing to concessions on the part of the delegates who had upheld the Régime of unlimited liability.

13. See Minutes of Fourth Session (Document 22 of C. I. T. E. J. A.) for details.

*Second International Conference on Private Air Law*

At the invitation of the Polish Government the Second Diplomatic Conference on Private Air Law was held in Warsaw from Oct. 4 to 12, 1929, to prepare for signature the Convention on the liability of the carrier in international air transport and the unification of air transport documents (tickets, bills of lading, etc.). This Convention was the final expression of the work of the 1925 Paris Conference and of the first three Sessions of the C. I. T. E. J. A.

33 nations were represented at the Conference, 32 by delegates and the United States by the writer as observer.<sup>14</sup> M. Zaleski, the Minister of Foreign Affairs opened the Conference and the reply to the speech of welcome was made by M. Pierre-Etienne Flandin who had presided at the 1925 Conference.

M. Lutostanski, the chief of the Polish delegation, was chosen President of the Conference and the following Vice-Presidents were named:

Sir Alfred Dennis (Great Britain),  
M. Pierre-Etienne Flandin (France),  
M. Giannini (Italy),  
M. Richter (Germany),  
M. Nishikawa (Japan),  
M. Peçanha (Brazil),  
M. Arendt (Luxemburg).

On account of the great number of amendments to the draft Convention made by the various Governments a Preparatory Commission was formed which was given the work of analyzing the various proposals, classifying them as primary or secondary questions of substance and questions of form. The conclusions of the Preparatory Commission were accepted by the Conference and a Drafting Commission drew up the actual text of 41 articles which was considerably modified from the original preliminary draft of 1925. The title was changed to the broader "Convention for the Unification of certain Rules Relative to International Transportation by Air."<sup>15</sup> The Convention received at the Conference the

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14. The countries represented by official delegates were: Austria, Belgium, Bulgaria, Brazil, China, Czechoslovakia, Denmark, Egypt, Esthonia, Finland, France, Germany, Great Britain, Australia, Union of South Africa, Greece, Hungary, Italy, Japan, Latvia, Luxemburg, Mexico, Norway, the Netherlands, Poland, Rumania, Spain, Sweden, Switzerland, Union of Socialist Soviet Republics, Venezuela and Yugoslavia.

15. For English translation of text of Convention and accompanying resolutions see Supplement to Bulletin of Treaty Information No. 7, September, 1929, issued by Department of State, Washington, D. C.

signatures of the delegates of 13 nations and before the period for signing closed on Jan. 30, 1930, 10 additional signatures were obtained.<sup>16</sup>

Article 37 states that as soon as the Convention shall have been ratified by five of the High Contracting Parties it shall become effective between them the 90th day after deposit of the fifth ratification. Up to the present, however, only four countries (Brazil, Rumania, Spain and Yugoslavia) have ratified the Convention but the ratifications of Great Britain, France and Poland are imminent and those of Germany, Austria and Hungary should follow shortly thereafter.

Before separating, the Conference unanimously adopted the following resolutions which recognized the work accomplished by the C. I. T. E. J. A. and confided to it the task of proceeding with the study and preparation of draft Conventions which will be submitted to future International Conferences of Private Air Law.

"A. The Conference, considering that the Warsaw Convention regulates only some of the difficulties regarding air transport and that international air navigation brings up many other questions which it would be desirable to regulate by international agreements, resolves that further conferences to continue this work of unification should be called at a later date by the French Government which has taken the initiative of convening these conferences.

"B. The Conference, recognizing the importance from the international point of view of a uniform regulation for all kinds of air transport, resolves that the C. I. T. E. J. A. should prepare as soon as possible a draft convention on this matter.

"C. The Conference, considering it advisable that standard forms of transport documents be adopted by all air navigation companies, resolves that they should adopt the models prepared by the C. I. T. E. J. A."

#### *Fifth Session of C. I. T. E. J. A.*

To resume the account of the work of the C. I. T. E. J. A., there were in 1930 meetings of the Commissions in Paris in May and just prior to the Fifth Plenary Session of the Committee at Budapest October 6th to 8th. Seventeen States sent delegates to the Session while the United States and Japan were represented by observers.<sup>17</sup>

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16. For proceedings of Conference see Minutes issued by Polish Ministry of Foreign Affairs, 1930.

17. For proceedings see Minutes of Fifth Session, Document 73 of C. I. T. E. J. A.

The Session was opened by M. de Danilovics, of the Hungarian Foreign Office, and in the absence of M. Laurent Eynac the chair was taken successively by the four Vice Presidents (Presidents of the various Commissions): MM. Giannini (Italy), Arendt (Luxemburg), Wolterbeek-Müller (the Netherlands) and Panie (Italy).

The Committee agreed to the principle of drawing up a preliminary draft Convention on the aeronautical register and real rights. However, the principal work accomplished at the Session was the approval of the draft Convention concerning liability for damage caused to third parties on the ground (Appendix B). Attached to the proposed text was a recommendation that the C. I. T. E. J. A. considered it advisable that this Convention be followed by a Convention on the guarantees to be given by the operator.

It was decided to send the draft to the French Government for distribution to the various *Stâtes* with a view to calling the Third International Conference of Private Air Law and on Feb. 5, 1931, it was forwarded by M. Laurent Eynac to the French Minister of Foreign Affairs for distribution to the various Governments accompanied by an explanatory note prepared by M. Ambrosini (Italy), the Reporter.

The preface to this note giving the history of the subject is as follows:

"Among the various drafts of international conventions studied by the C. I. T. E. J. A. that regarding damage caused by aircraft to third parties on the ground has always been considered as one of the most important and urgent. The urgency has been more evident since the signature of the International Convention of Warsaw of October 12, 1929, on the unification of certain rules regarding air transport, which regulates the liability of the air carrier for damage caused to passengers and freight carried by air.

"After the signature of the Warsaw Convention the international air transport companies, which desired to have the international legal régime of liability completed, passed resolutions and proposals that the Convention concerning liability to third parties be completed as rapidly as possible. The insurance companies joined their resolutions to those of the air navigation companies, pointing out especially the fact that it was difficult to fix proper premiums and to assume the insurance of damage caused to third parties so long as a single international system of liability and the application of the principle of limited liability did not permit the exact calculation of the risks involved.

"Taking heed of this necessity, the C. I. T. E. J. A. first proposed to submit to the Second Diplomatic Conference at Warsaw not only the draft regarding the liability of the carrier regarding passengers and freight, but also that on the liability regarding third parties. This intention, however, could not be carried out on account of the wide divergence of views between the various delegations of the C. I. T. E. J. A. regarding whether or not the principle of limited liability could be applied to third parties injured on the ground. These divergences long appeared difficult to reconcile. Recently, however, the C. I. T. E. J. A. undertook to make reciprocal concessions in a spirit of collaboration made more and more necessary by insistent steps taken by the interested circles and finally adopted the principle of limitation. The draft regarding the liability for damage caused to third parties was finally completed and approved at the Fifth Session at Budapest, October, 1930.

"The draft Convention, which is the fruit of four years of work, and in which have participated eminent jurists and technicians of the more forward-looking nations, now appears acceptable in its general lines.

"This draft is now brought to the knowledge of the interested governments for submission, discussion and approval at the Third Diplomatic Conference of Private Air Law."

#### *Sixth Session of C. I. T. E. J. A.*

In 1931 the various commissions held meetings in Paris in June and immediately before the Sixth Plenary Session which was held at the Ministry of Foreign Affairs October 23 and 24.

Thirty-eight representatives from 21 nations actually attended the Conference out of the 61 members of 32 States at present forming the C. I. T. E. J. A. (For complete composition of Committee see Appendix C.)

The opening address was delivered by M. Campana, of the Ministry of Foreign Affairs, and M. Giannini (Italy) was chosen President for 1931-32 in succession to M. Laurent Eynac who was awarded the title "President d'Honneur". The Presidents of the various Commissions (who are thus Vice-Presidents of the C. I. T. E. J. A.) were chosen as follows:

1st Commission: M. Cogliolo (Italy) replacing M. Giannini.

2nd Commission: M. Ripert (France) replacing M. Arendt (Luxemburg), retired.

3rd Commission: P. Pittard (Switzerland), replacing M. Panie (Italy).

The Conference approved with certain modifications the preliminary draft of Convention prepared by the First Commission on the ownership of aircraft and the aeronautical register. By this Convention each Government agrees to set up a register in which every aircraft registered according to the national law will be inscribed for the purpose of recording the ownership and real rights by the competent authority of the State.

The Conference likewise approved another preliminary draft Convention presented by the First Commission: that on mortgages, other real securities and aerial liens. Both these texts will be sent to the French Government for transmittal to the various States who are members of the C. I. T. E. J. A.

A preliminary draft Convention on the legal status of the Commanding Officer of an aircraft presented by the Fourth Commission was discussed and will be studied jointly with the International Labor Bureau of Geneva before it is definitely approved.

Other preliminary draft Conventions at present under consideration are that on attachment of aircraft (First Commission), that on the guarantees to be furnished by the operator for damage caused to third parties on the ground (Third Commission), a complement to the text approved at the 1930 Budapest Session, and that on the rescue of aircraft at sea (Third Commission). The Second Commission is occupied with questions of general average and tourist transport.

It is expected that the Seventh Plenary Session of the C. I. T. E. J. A. will take place in June, 1932, and the Third International Conference on Private Air Law will probably be held in 1933.

#### *The Participation of the United States in the C. I. T. E. J. A.*

It will have been observed that prior to 1931 the United States did not participate officially in the work of the C. I. T. E. J. A. brought to fruition by International Conferences. Our Government was aware, however, of the importance of keeping in touch with the progress being made in the international codification of private air law and on May 3, 1928, Mr. Frank B. Kellogg, the Secretary of State, submitted to the President a recommendation that Congress be requested to authorize an annual appropriation of

not more than \$250 to meet the share of the United States of the expenses of the C. I. T. E. J. A. The note read as follows:<sup>18</sup>

"THE PRESIDENT:

An international conference on private aerial law called by the French government met at Paris on October 27, 1925. The conference drew up a draft international convention containing an outline of principles governing settlements for losses sustained in the transportation of merchandise by commercial aircraft and adopted a motion providing for the creation of an International Technical Committee of Aerial Legal Experts to continue the work of the conference. This Committee has been organized and has held two sessions, the first at Paris in May, 1926, and the second in that city in April, 1927. A third session will be held at Madrid beginning on May 24, 1928. The draft convention adopted at the conference which met on October 27, 1925, is now being considered by this committee, and its studies will result in the preparation of drafts of other conventions for consideration at future international conferences on private aerial law.

The Secretary of State is in receipt of a note from the French ambassador in which he states that the deliberations of the committee will render it possible to make studies progress in the unification of private aerial law, and that the French Government desires to be informed whether the Government of the United States is willing to contribute toward the annual expenses of the committee. An estimate of expenses for the year 1928, amounting to 33,400 gold francs, as approved by the committee is herewith inclosed. There is also inclosed a copy of a resolution adopted by the committee appointing four commissions to make a study of the questions to be considered by the committee, on which the following countries are represented: Germany, England, Belgium, Brazil, Colombia, Denmark, Egypt, Spain, France, Greece, Guatemala, Hungary, Italy, Japan, Lithuania, Luxemburg, the Netherlands, Peru, Poland, Rumania, the Kingdom of the Serbs, Croats, and Slovenes, Sweden, Switzerland, Czechoslovakia, Turkey, Russia, Venezuela, China, Esthonia, Latvia, Mexico, Monaco and Portugal. Twenty countries have already paid their quota toward the expenses of the committee for the year 1928.

The embassy in Paris reports that the amount paid by each country toward the annual expenses of the committee is the same, and that it will be less than \$250 for each calendar year.

The National Advisory Committee for Aeronautics and the Department of Commerce, whose views on the subject were requested by the Secretary of State have expressed the belief that the deliberations of the International Technical Committee of Aerial Legal Experts are of sufficient importance to this Government to warrant an annual contribution toward the expenses of the committee.

The Secretary of State is of the opinion that it would be helpful to agencies of this Government interested in the development of commercial aviation if they could be kept fully informed of the deliberations of the International Technical Committee of Aerial Legal Experts, and that this

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18. For enclosures mentioned in note see House of Representatives Report No. 1817, 70th Congress, 1st Session.



Government should participate in the meetings of the committee and its sub-committees to such extent as may be found to be practicable, in order that their findings may be available to this Government for consideration in connection with any future conferences on private aerial law in which the Government of the United States may desire to participate.

With the view, therefore, of enabling this Government to participate in the advantages to be derived from the deliberations of the International Technical Committee of Aerial Legal Experts the undersigned, the Secretary of State, has the honor to enclose a draft of a joint resolution for which he recommends that the favorable consideration of the Congress be requested authorizing an annual appropriation of a sum not in excess of \$250 to meet this Government's share of the expenses of the International Technical Committee of Aerial Legal Experts beginning with the calendar year 1928.

Respectfully submitted,

FRANK B. KELLOGG."

On the following day Mr. Coolidge transmitted the note to Congress commending the recommendation of the Secretary of State to its favorable consideration. While the joint resolution (H. J. Res. 311) authorizing the annual appropriation passed the House of Representatives on May 28, 1928, Congress adjourned the following day without any action on the resolution having been taken by the Senate. Likewise, the second session of the 70th Congress ran its course with no action by the Senate on the resolution.

The whole effort had to be started once more "ab initio" and on March 26, 1930, the late Mr. J. P. Cotton, then Acting Secretary of State, submitted to the President the following note:<sup>19</sup>

"THE PRESIDENT:

On May 4, 1928, President Coolidge commended to the favorable consideration of the Congress a report from Secretary of State Kellogg requesting legislation authorizing an annual appropriation of a sum not in excess of \$250 to meet this Government's share of the expenses of the International Technical Committee of Aerial Legal Experts, which is printed as Senate Document No. 94, Seventieth Congress, a copy of which is enclosed.

Pursuant to this request, H. J. Res. 311, authorizing an annual appropriation to meet the quota of the United States toward the expenses of the International Technical Committee of Aerial Legal Experts, passed the House of Representatives on May 28, 1928.

As Congress adjourned on May 29, no action on the joint resolution was taken by the Senate in the first session. Nor was any action taken by the Senate on this resolution during the second session of the Seventieth Congress.

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19. See House of Representatives Report No. 1345, 71st Congress, 2nd Session.

Since Secretary of State Kellogg's report to President Coolidge of May 3, 1928, the International Technical Committee of Aerial Legal Experts has held two further sessions, one at Madrid in May, 1928, the other at Paris during May, 1929.

As a result of agreement having been reached at the Madrid session upon the text of a draft convention, a Second International Diplomatic Conference on Private Aeronautical Law was convened at Warsaw, Poland, last October.

Thirty-nine countries were represented at this conference, and the convention resulting therefrom was signed by the representatives of the following 13 nations. Austria, Brazil, Commonwealth of Australia, Denmark, France, Germany, Great Britain, and Northern Ireland, Italy, Jugoslavia, Luxemburg, Poland, Switzerland, and the Union of South Africa.

This convention attempts to regulate in a uniform manner international transportation by air with respect to the documents employed for such transportation and to the liability of the carrier.

Each of the high contracting parties to this convention shall have the right to occasion a meeting of another international conference for the purpose of seeking improvements which might be made in the present convention, at any time more than two years from the date this convention goes into effect. Furthermore, the International Technical Committee of Aerial Legal Experts will continue to meet, probably at least once a year, for the same purpose.

The subjects covered in this convention and to be discussed in future meetings of this committee are of great interest and value to the executives and operators of both domestic and international air transportation companies, and include among other subjects, the form of, and information to be contained in, passage tickets, baggage checks, and aerial waybills to be used in international air transportation; also the fixing and limiting of the liability of the carrier for injury to passenger and goods.

The committee maintains a permanent office at 37 Avenue Rapp, Paris. Its expenses and activities are substantially the same as were set forth in the statement printed in the enclosed Senate Document No. 94. The embassy at Paris reports that the amount paid by each country toward the annual expenses of the committee is the same and since it is fixed by its regulations at 1,000 gold francs annually, it will be less than \$250 for each year.

In view of future meetings of this International Technical Committee of Aerial Legal Experts and other international conferences upon this convention thus envisaged and because of the growing interest taken in these deliberations by the aeronautical interests in this country, the Secretary of State, by identic letters dated December 18, 1929, again requested the opinion of the interested agencies of the Government upon the question of seeking an appropriation by Congress of a sum not to exceed \$250 annually to pay this Government's share in the expenses of the International Technical Committee of Aerial Legal Experts.

In reply, the war, Post Office and Commerce Departments and the National Advisory Committee for Aeronautics have expressed the opinion that the deliberations of this committee are of sufficient importance to this Government to warrant an annual contribution toward its expenses.

It would seem helpful to agencies of this Government interested in the development of commercial aviation if they could be kept fully informed of the deliberations of the International Technical Committee of Aerial Legal Experts, and that this Government should participate in the meetings of the committee to such extent as may be found practicable, in order that its findings may be available to this Government for consideration in connection with any future conferences on private aerial law in which the Government of the United States may desire to participate.

I therefore recommend that the Congress be requested to enact legislation authorizing an annual appropriation of a sum not in excess of \$250 to meet this Government's share of the expenses of the International Technical Committee of Aerial Legal Experts, beginning with the year 1930.

A draft of a resolution designed to carry out this recommendation is attached.

Respectfully submitted,

J. P. COTTON."

On April 1, 1930, the President sent to Congress the following message:<sup>20</sup>

"TO THE CONGRESS OF THE UNITED STATES:

I commend to the favorable consideration of the Congress the enclosed report from the Acting Secretary of State to the end that legislation may be enacted authorizing an annual appropriation of a sum not in excess of \$250 to meet the share of the United States of the expenses of the International Technical Committee of Aerial Legal Experts beginning with the year 1930.

HERBERT HOOVER."

The new resolution (H. J. Res. 299) was passed by the House of Representatives on May 29, 1930. Being finally passed by the Senate on February 10, 1931, it was approved by the President on February 14, 1931. The text in full of this momentous document approving the participation of the United States in the work of regulating the great field of international private air law is as follows:

"(Public Resolution—No. 118—71st Congress)—(H. J. Res. 299)

Joint Resolution to provide an annual appropriation to meet the quota of the United States toward the expenses of the International Technical Committee of Aerial Legal Experts.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. That a sum not to exceed \$250 is hereby authorized to be appropriated annually to meet the share of the United States of the expenses of the International Technical Committee of Aerial Legal Experts, beginning with the year 1930.

Approved, February 14, 1931."

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20. See House of Representatives Report No. 1345, 71st Congress, 2nd Session.

## Appendix A

### BY-LAWS OF C. I. T. E. J. A.

*Article 1.* The President of the Committee elected at the beginning of every session continues in office until the opening of the next session.

*Article 2.* The Committee organizes from one session to another the Commissions and decides how many members they will include. Every member of a Commission may be represented by another member of the Committee.

Only one member of the same nationality may belong to any one Commission.

*Article 3.* The Secretary General of the Committee is charged with the duty of attending to the correspondence, drawing up the minutes of the Committee and the Commissions, receiving and distributing questionnaires and reports, calling the Commissions and the Committee.

*Article 4.* The Commissions provided for by Article 3 herein above elect their Presidents and the Reporters for each one of the questions entered on the agenda.

The Reporter prepares on the question referred to him a questionnaire sent to all the members of the Commissions, who must within the time set by the said Commission when the question was entered on the agenda, return their answers directly to the Reporter and also send a copy to the Secretary General of the Committee.

The Reporter makes out his report containing a text preceded by an explanation. He sends his report to the Secretary General of the Committee for distribution to all the members of the Commission.

The Commission next meets at the call of its Chairman to study the reports that have been made and to prepare a text to be referred to the Committee. It then appoints the Reporters charged with the duty of laying its findings before the Committee. The Commission meets at the place named by its President in agreement with the President of the Committee.

*Article 5.* The Committee meets on being called by its President who states the object of the conference.

It hears the statements of the Reporters appointed by the Commissions and passes upon the texts the final wording of which is given to a Sub-Committee.

*Article 6.* The drafting Sub-Committee consists of five members appointed by the Committee. It elects its President and the Reporter General whose duty is to present the texts before the Committee.

*Article 7.* Upon approval by the Committee of the general report and drafts of Convention these are forwarded to the French Government to be communicated to all the governments with a view to an early convocation of the International Conference on Private Aerial Law.

*Article 8.* The draft of the budget for every year is prepared by the Secretary General and considered and voted on by the Committee not later than the end of the first half of the previous year.

The Committee may offer for their acceptance to the Contracting States such changes as may be deemed necessary in the quotas to be paid by the several States.

*Article 9.* The Secretary General is charged with keeping the accounts and the service of the Treasury of the Commission.

He receives the quotas of the States and sees that the appropriations made in the budget are paid by drawing checks for the necessary amounts.

A Commission of three members is appointed every year by the Committee for examination of the financial conduct of his office by the Secretary General; one of the members is charged with the duty of reporting to the Committee concerning the draft of the budget for the following year and the accounts of the past year.

*Article 10.* Estimates will be made in gold francs.

*Article 11.* Quotas of the Contracting States will be due the first of January of every year. They will be computed in gold francs and paid for in French francs or Sterling or in the national currency of the several Contracting States at the rate of exchange on the date above mentioned.

*Article 12.* The new Contracting States will pay a quota equal to that set in the budget for the current year for the other Contracting States.

These new States will owe the whole of the quota for any year that has been begun.

*Article 13.* The quotas of the Contracting States sent to the Secretary General by check payable to the Secretary General of the International Technical Committee of Aerial Legal Experts shall be credited by him in an account carried at the bank in the name of the International Technical Committee of Aerial Legal Experts. That account will be opened in the bank and in the currency designated each year by the Commission for Auditing of Accounts.

*Article 14.* The accounts will be audited every year by the Commission for Auditing of Accounts.

*Article 15.* (Provisional.) The Commission on Documents and Regulations is temporarily at the disposal of the Committee for the study of any amendments or additions to be made in the text of these by-laws.

That study may be taken up at any time by the President of the Commission at the request of the President of the Committee.

## Appendix B

### DRAFT CONVENTION CONCERNING LIABILITY FOR DAMAGE CAUSED TO THIRD PARTIES ON THE GROUND

*Article 1.* Any damage caused to persons or objects on the ground by aircraft while manoeuvring or flying, entitles the injured party to compensation if it can be proved that damage has been caused and that it has been caused by aircraft.

This liability can be attenuated or removed in case of fault of the injured person and in conformity with the provisions of the law of the Court informed of the occurrence.

*Article 2.* Compensation must be given in the following cases:

- a) Where damage results from throwing anything overboard, whether it be ballast or something thrown overboard in case of necessity;
- b) Where damage is caused by any person on board the aircraft, excepting it if can be proved that the damage was caused intentionally by some act which had nothing to do with the operating of the aircraft and without the operator or his staff being able to prevent the damage.

*Article 3.* The operator is liable in the cases mentioned in the preceding articles, excepting where he has recourse against the author of the damage.

The operator of the aircraft is any person who uses that aircraft for his own account.

Where the name of the operator is not entered in the aeronautical register or in any other official document, the owner shall be considered as the operator until proof to the contrary is forthcoming.

*Article 4.* The operator of an aircraft is liable for any accident up to the value of the aircraft at the place and time when it is first put into commission.

Half the amount shall be allotted to repairs of damages caused to persons and the remaining half to repairs of damages to goods.

In any case, the limit of the operator's liability shall not be less than 2,500,000<sup>1</sup> French frs. for each category of damages.

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1. This amount subject to revision at International Conference.

If the amount marked for compensation for damages caused to goods is not wholly needed to cover this item, the balance shall go towards compensation for injury to persons.

*Article 5.* If there are several injured persons in the same accident, and if the whole sum to be paid as compensation exceeds the limits provided for in Article 4, it will be necessary to proceed to a proportional reduction, taking into consideration the rights of each person without, however, exceeding the total amount provided for above.

*Article 6.* When several persons are injured in the same accident, the parties concerned shall notify their claims within a maximum time limit of six months, calculated from the day of the accident. After this period has elapsed, the claims shall be met and the parties concerned shall only be allowed to exercise their rights on the amount not yet distributed.

*Article 7.* If various injured third parties submit their claims, in accordance with the provisions of the preceding articles and of article 9 before the Courts of various States, the defendant may claim the total amount of compensation and monies owing to him, with a view to preventing the limits of his liability being exceeded.

*Article 8.* The operator shall not be entitled to take advantage of the provisions of this Convention which limit his liability if the damage is caused by his own fault.

*Article 9.* Actions for compensation in case of injury within the meaning of the preceding articles can be heard by: the legal authority of the domicile of the defendant, the legal authority of the place in which the damage took place, the legal authority of the domicile of the underwriter, as far as the law of that place gives the injured party any right of recourse against the underwriter.

*Article 10.* These actions shall be heard within two years from the date when the damage was caused. If the injured person proves that he was unable to know about the damages or to identify the person responsible for them, the two year period shall start from the day on which that person is in possession of such knowledge.

In any case, four years from the time of the accident is the time limit within which proceedings may be started.

The method of calculating the time limit and of deciding on causes for adjournment and interruption of the time limit prescribed shall be determined by the law of the Court informed of the occurrence.

*Article 11.* In case of the decease of the person liable for the damage, proceedings against the responsible party within the limits provided by the present Convention shall be carried out against the heirs of that person.

*Article 12.* The present Convention is applicable in all cases where damage is caused by aircraft of one of the Contracting States within the borders of another Contracting State, or on the high seas to a vessel belonging to another Contracting State, as well as to persons or goods on that vessel.

## Appendix C

### COMPOSITION OF C. I. T. E. J. A.

<i>Argentine Republic</i> —	COLONEL ZANNI, Air Attaché at Embassy, Paris.
<i>Austria</i> —	DR. VICTOR KRAUS, Counselor of Ministry of Commerce and Communications. DR. GUIDO STROBELE, Counselor of Ministry of Justice. DR. RAINER REINOEHL, Counselor of the Federal Ministry of Commerce and Communications.
<i>Belgium</i> —	HENRY DE VOS, Ministry of Transportation.
<i>Brazil</i> —	CARLOS DA SILVA COSTA, Prosecutor of the Republic. MEDEIROS DO PAÇO, Secretary of Embassy at Paris.

- China*— SCIE-TON-FA, First Secretary of Legation at Paris.  
WANG YATSE, First Secretary of Legation at The Hague.
- Czechoslovakia*— JOSEF NETIK, Counselor of Ministry of Public Works.  
BENJAMIN SZALATNAY, Ministry of Foreign Affairs.
- Denmark*— L. INGERSLEV, Ministry of Justice.  
K. GREGERSEN, Ministry of Public Works.
- Dominican Republic*— DR. MOISÈS GARCIA MEILA, Minister Plenipotentiary at Paris.
- Egypt*— MOURAD KAMEL BEY, Chargé d'Affairs at The Hague.
- France*— LAURENT EYNAC, Deputy, Former Minister of Air.  
DE LAPRADELLE, Professor of Government Law School.  
GEORGES RIPERT, Professor of Government Law School.  
JACQUES VIVENT, Air Ministry.  
J. PILLAUT, Ministry of Foreign Affairs.
- Germany*— DR. REINHOLD RICHTER, Ministerial Counselor, Ministry of Justice.  
DR. ALFRED WEGERT, Ministerial Counselor, Ministry of Communications.  
DR. OTTO RIESE, Counselor, Ministry of Justice.
- Great Britain*— SIR ALFRED DENNIS, K. B. E., C. B.  
A. W. BROWN, Assistant Treasury Solicitor.  
COLONEL NORRIS.
- Greece*— J. YOUPIS, Counselor of the Court of Athens, Judge of the Mixed Arbitral Tribunal at Paris.
- Guatemala*— PINEDA DE MONT, Paris.
- Hungary*— BELA DE SZENT-ISTVANY, Counselor of Ministry of Foreign Affairs.
- Italy*— AMEDEO GIANNINI, Counselor of State, Honorary Minister Plenipotentiary.  
PIETRO COGLIOLO, Professor of the Royal University of Genoa.  
DE ROSSI DEL LION NERO, Counselor of Legation.  
MANLIO MOLFESE, Director of Civil Aviation, Air Ministry.  
ANTONIO AMBROSINI, Director of the Institute of Air Law, Rome.  
FELICE PANIE, former Deputy.  
SALVATORE CACOPARDO, Air Ministry, Rome.
- Japan*— S. IWAI, Secretary of Ministry of Communications, Japanese Embassy, Paris.
- Lithuania*— GAETAN DOBKIEVICIUS, Technical Counselor of Legation, Paris.
- Luxemburg*— BASTIN, Consul General, Paris.
- Mexico*— ARTURO PANI, Consul General, Paris.
- The Netherlands*— J. WOLTERBEEK-MULLER.  
J. F. SCHONFELD, Ministry of Waterways, The Hague.
- Peru*— MAJOR MONTOYA, Peruvian Legation, Paris.
- Poland*— LEON BARINSKI, Legal Counselor of Ministry of Foreign Affairs.  
PIERZCHALA, Counselor of Ministry of Communications.

- Portugal*— PROFESSOR LOBO D'AVILA LIMA, Counselor of Ministry of Foreign Affairs.  
DE OLIVEIRA RAMOS.  
MAJOR LÉLO PORTELA, Military Attaché, Legation, Paris.
- Rumania*— PRINCE CANTACUZÈNE, Minister Plenipotentiary, Paris.  
LAZARE MUNTEANU, Counselor of the High Court of Appeal of Rumania, Judge of the Mixed Arbitral Tribunal, Paris.
- Spain*— MARIANO DE LAS PENAS, General Directorate of Navigation and Air Transport.
- Sweden* - THORE ENGSTROMER, Professor of Upsala University.
- Switzerland*— EDMOND PITTARD, Legal Expert of Federal Aerial Office.  
FRITZ HESS, Federal Department of Railroads.  
DJELAL HAZIM BEY, First Secretary, Embassy, Paris.
- Turkey*—
- Union of Socialist*
- Soviet Republics*— LACHKEVITCH, Legal Counselor of Embassy, Paris.
- United States*— JOHN JAY IDE, Technical Assistant in Europe, National Advisory Committee for Aeronautics.
- Yugoslavia*— DOUCHAN T. SIMOVITCH, General Staff, Ministry of War.  
DR. STEVEN DRACOULITCH, Director of Civil Aviation.  
ILLIJA GARACHANINE, Ministry of Foreign Affairs.  
ILLIJA A. PRZIC, Ministry of Interior.